

**Letter of Findings: 01-20150134
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana individual failed to establish that she abandoned her Indiana domicile at the time she moved to Pennsylvania in 2008. For purposes of Indiana's individual adjusted gross income tax, Indiana individual remained an Indiana resident subject to that tax.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(e); IC § 6-1.1-12-37(f); IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer protests the assessment of Indiana individual income tax on the ground that she was not a resident of Indiana during 2011.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued Taxpayer a letter stating that she was subject to Indiana's income tax filing requirement. Taxpayer responded stating that she did not earn Indiana wages during 2011 and that she has resided at a Pennsylvania address since 2008. The Department responded pointing out that she claimed an Indiana Homestead Tax Credit during 2011.

Taxpayer disagreed with the Department's conclusion and submitted a protest to that effect. An administrative hearing was conducted by telephone. Following the hearing Taxpayer supplied copies of her 2011 Pennsylvania income tax return, a copy of a lease agreement by which agreed to rent her Indiana home to an Indiana tenant, a notice sent to the Marion County Auditor's Office asking that the homestead credit be removed from her Indiana property, and a bill from the Marion County auditor for unpaid property taxes.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer was an Indiana resident during 2011 and required to file a 2011 Indiana income return.

Taxpayer argues that she has lived at an out-of-state Pennsylvania location since 2008, that she did not earn Indiana income during 2011, and that she has since expressed her intention to revoke the homestead credit claimed on her Indiana property for 2010 through 2013.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v.

Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person" IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." Id. Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." Id. "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." Croop v. Walton, 157 N.E. 275, 278 (Ind. 1927).

In State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. Id. at 1317 (Internal citations omitted).

The Supreme Court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. Id. Facts to be considered include:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. Id. (Emphasis added).

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home," insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

As pointed out in [45 IAC 3.1-1-22](#) claiming the benefit of a homestead exemption or credit is a factor in determining in which state an individual resides for purposes of Indiana's income tax law. Under Indiana law "[h]omestead" is defined as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2) (Emphasis added). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

There is no dispute that Taxpayer owns an Indiana home and that she has claimed a homestead credit on the property before, during, and after 2011. Taxpayer has provided documentation establishing that she revoked the claim to the credit and has since been sent a bill by Marion County to recoup an additional amount of property tax for 2011, 2012, and 2013. There is nothing to establish that she has since paid that amount.

However there is also evidence that Taxpayer obtained and retained an Indiana driver's license during 2011, that she earned retirement income during 2011, and that the retirement account listed an Indiana address.

The information establishes that Taxpayer established an Indiana domicile prior to 2011 and that she has since retained that residence. In order to establish that she is no longer an Indiana resident, Indiana law requires that "there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently" Croop 157 N.E. at 278.

Notwithstanding Taxpayer's efforts to revoke the homestead credit claimed against property taxes due in 2012, 2013, and 2014, the Department does not agree Taxpayer's move to Pennsylvania in 2008 represented an unqualified intent to "abandon" her Indiana domicile and establish a new domicile in Pennsylvania. As previously discussed, abandoning Indiana domicile is a question of intent. Taxpayer has not demonstrated the unqualified intent to abandon Indiana as her domicile. This is based on several facts taken together: Taxpayer still owns a residence in Indiana; Taxpayer had taken the Indiana homestead credit on her Indiana residence for all the years since she moved to Pennsylvania in 2008 thus representing by law that the Indiana residence was her principal residence in the years after she moved; when this was pointed out to her, Taxpayer applied to remove the credit for only the tax year at issue in this protest and necessarily the subsequent years, but retained the benefit of the homestead credit for 2008, 2009, and 2010; Taxpayer obtained an Indiana driver's license in 2011 and has retained that license; a retirement account from which Taxpayer receives income lists an Indiana address. These facts call into question Taxpayer's intent to abandon Indiana as her domicile.

Taxpayer has failed to meet her burden under IC § 6-8.1-5-1(c) of establishing that she abandoned her Indiana domicile in 2008 and - sometime following 2011 - established an "intention" to establishing a Pennsylvania domicile.

FINDING

Taxpayer's protest is respectfully denied.

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